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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DENNIS FLORER,

Plaintiff,

11 v.

12 CHERYL BALES-JOHNSON, et al.,

13 Defendants.

No. C06-5561 RJB/KLS

ORDER DIRECTING SERVICE BY U.S.
MARSHAL OF AMENDED COMPLAINT

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15 This civil rights action has been referred to United States Magistrate Judge Karen L.
16 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On October 26,
17 2006, Plaintiff was granted leave to proceed *in forma pauperis* and his Complaint was docketed.
18 Dkts. 4 and 5, respectively. On May 4, 2009, Plaintiff was granted leave to file a third amended
19 complaint. Dkt. 187. On June 1, 2009, Plaintiff filed a Third Amended Complaint. Dkt. 190.
20 On October 21, 2009, the court ordered the substitution of Diane Benfield as the formerly
21 identified “registered dietician identified in Grievance Log No. 0823868.” Dkt. 200. Plaintiff
22 has provided a service copy and marshal form for service of the Third Amended Complaint (Dkt.
23 190) on Defendant Benfield.
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1 Accordingly, it is **ORDERED** that the United States Marshal shall effect service of
2 Plaintiff's Third Amended Complaint as follows:

3 (1) Service by United States Marshal

4 The United States Marshal shall send the following to each named Defendant for whom
5 there is a filled out service form by first class mail: a copy of the Third Amended Complaint and
6 of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of
7 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed
8 to the Clerk's Office. All costs of service shall be advanced by the United States. **The Clerk**
9 **shall assemble the necessary documents to effect service and shall send a courtesy copy of**
10 **the Complaint to the Washington State Attorney General's Office.**

12 (2) Response Required

13 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of
14 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**
15 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a
16 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil
17 Procedure.
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19 Any defendant who fails to timely return the signed Waiver will be personally served
20 with a summons and complaint, and may be required to pay the full costs of such service,
21 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or
22 motion permitted under Rule 12 within **thirty (30) days** after service.
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24 (3) Filing and Service by Parties, Generally

25 All original documents and papers submitted for consideration by the court in this case,
26 are to be filed with the Clerk of this court. The originals of all such papers shall indicate in the

1 upper right-hand corner the name of the Magistrate Judge to whom the copies are to be
2 delivered. The papers shall be accompanied by proof that such documents have been served
3 upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the
4 day and manner of service and may be written acknowledgment of service, by certificate of a
5 member of the bar of this court, or by affidavit of the person who served the papers.

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7 (4) Motions

8 Any request for court action shall be set forth in a motion, properly filed and served. The
9 motion shall include in its caption (immediately below the title of the motion) a designation of
10 the Friday upon which the motion is to be noted upon the court's calendar. That date shall be the
11 third Friday following filing of the motion (fourth Friday for Motions for Summary Judgment).
12 All briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30
13 p.m. on the Monday immediately preceding the Friday appointed for consideration of the motion.
14 If a party fails to file and serve timely opposition to a motion, the court may deem any opposition
15 to be without merit. The party making the motion may file, not later than 4:30 p.m. on the
16 Friday designated for consideration of the motion, a response to the opposing party's briefs and
17 affidavits.
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19 (5) Motions for Summary Judgment

20 If one of the parties files a motion for summary judgment pursuant to Federal Rules of
21 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56
22 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for
23 summary judgment if the moving party has shown the absence of issues of material fact and an
24 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere
25 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary
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1 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific
2 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary
3 judgment motion or to present counter evidence could result in the court accepting the moving
4 party's evidence as the truth, and entering final judgment in favor of the moving party without a
5 full trial. *Rand v. Rowland*, 113 F.3d 1520 (9th Cir. 1997).

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7 (6) Direct Communications with District Judge or Magistrate Judge

8 No direct communication is to take place with the District Judge or Magistrate Judge with
9 regard to this case. All relevant information and papers are to be directed to the Clerk.

10 (7) Clerk's Action

11 The Clerk is directed to send a copy of this Order and of the General Order issued by the
12 Magistrate Judges to Plaintiff.

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14 DATED this 23rd day of November, 2009.

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18 Karen L. Strombom
19 United States Magistrate Judge
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